

## **“METHAMPHETAMINE--THE NEW CRIME WAVE”**

2005 METH SUMMIT

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### **FEDERAL METH PROSECUTION**

- I. **OVERVIEW.** Federal Drug Trafficking Cases in North Dakota: A close partnership between Federal, state and local law enforcement agents and prosecutors.
  - A. State and local law enforcement officers investigate a large majority of drug trafficking cases occurring in the State of North Dakota, and they are prosecuted by State's Attorneys throughout the State.
  - B. Federal drug cases prosecuted in United States District Court in North Dakota generally involve large interstate drug conspiracy cases as the federal government's resources and investigative tools make prosecution easier, especially to go upline to the supplier in the source state.
  - C. Federal Tools and Resources.
    1. Nationwide network of criminal investigative agencies to assist on cases, including Drug Enforcement Administration, Federal Bureau of Investigation, United States Marshal Service, United States Customs, United States Border Patrol/INS, Bureau of Alcohol, Tobacco, and Firearms, Bureau of Indian Affairs, etc.
    2. The federal grand jury may be used as an investigative tool to require recalcitrant witnesses to give testimony and provide evidence, e.g., handwriting exemplars and fingerprints, and obtain records and other evidence from persons and businesses throughout the United States.

3. Federal prosecutors have nationwide subpoena power through United States District Court for Grand Jury investigations and trials, as opposed to State's Attorneys who have limited subpoena power beyond North Dakota's borders.

4. Midwest HIDTA (High Intensity Drug Trafficking Area)-A unique federal/state partnership for the investigation and prosecution of methamphetamine cases in state and federal courts, depending on the case. The "HIDTA attorney" is a North Dakota Assistant Attorney General who works in the United States Attorney's Office in Bismarck, North Dakota, is cross-deputized as a Special Assistant United States Attorney, and can prosecute methamphetamine cases in both state and federal courts.

5. Additional federal funding through HIDTA and OCDETF (the federal Organized Crime Drug Enforcement Task Force) to help fund investigations, including overtime pay for state and local police working on joint federal-state drug investigations.

II. TITLE 21, UNITED STATES CODE, SECTION 801, et seq: Primary federal drug trafficking criminal statutes.

- A. 21 U.S.C. § 802. Definitions - (including controlled substance, immediate precursor, listed chemical, list I chemical, list II chemical, etc.)
- B. 21 U.S.C. § 812. Schedules of Controlled Substances - (revised schedules are found in the Code of Federal Regulations at Title 21, C.F.R. Part 1308.)
- C. 21 U.S.C. § 841(a). Unlawful Acts. Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -
  - (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

21 U.S.C. § 841(b). Penalties.

1. Ten Year Mandatory Minimum Sentences.

- (b)(1)(A) - A person who violates § 841(a)(1) and is involved with the following amounts of drugs faces a maximum penalty of 10 years to life imprisonment, with a ten year mandatory minimum sentence, and a \$4,000,000 fine:

- 50 grams cocaine base (mixture)
- 500 grams meth (mixture) or 50 grams meth (pure/actual)
- 1 kilo heroin (mixture)
- 5 kilos cocaine (mixture)
- 1000 kilos marijuana or 1000 marijuana plants

- with one prior drug trafficking conviction the maximum penalties for these amounts of drugs are increased to 20 years to life imprisonment, with a 20 year mandatory minimum, and a \$8,000,000 fine; and

- with two prior drug trafficking convictions, mandatory life imprisonment.

## 2. Five Year Mandatory Minimum Sentences.

- (b)(1)(B) - a person who violates § 841(a)(1) and is involved with the following amounts of drugs faces a maximum penalty of 5 years to 40 years imprisonment, with a five year mandatory minimum, and a \$2,000,000 fine:

- 5 grams cocaine base (mixture)
- 50 grams meth (mixture) or 5 grams meth (pure/actual)
- 100 grams heroin (mixture)
- 500 grams cocaine (mixture)
- 100 kilos marijuana or 100 plants

- with one prior drug trafficking conviction the penalties for these amounts of drugs are increased to 10 years to life imprisonment, with a 10 year mandatory minimum, and a \$4,000,000 fine.

## 3. No Mandatory Minimum Sentences.

- (b)(1)(C) - a person who violates § 841(a)(1) and is involved with less than the mandatory minimum amounts of drugs set forth in §§ 841(b)(1)(A) or (b)(1)(B), faces a maximum penalty of 20 years imprisonment and a \$1,000,000 fine.

- with one prior drug trafficking conviction the maximum penalties for these amounts of drugs are increased to 30 years imprisonment and a \$2,000,000 fine.

4. No Mandatory Minimum Sentence (Penalty for less than 50 kilos marijuana).

- (b)(1)(D) - a person who violates § 841(a)(1) and is involved in less than 50 kilograms of marijuana (or 50 plants) faces a maximum penalty of 5 years imprisonment and a \$250,000 fine:

-with one prior drug trafficking conviction the maximum penalties are 10 years imprisonment and a \$500,000 fine.

Notes Regarding Drug Amounts:

\* The United States must prove the amount of drug to the jury beyond a reasonable doubt in order for the defendant to receive an enhanced penalty based upon quantity.

\* A co-conspirator will be held responsible for all drugs in the conspiracy of which he was aware or should have been aware, even if he was not directly involved with those drugs. However, reductions will be made for minor or minimal participation, if applicable.

D. 21 U.S.C. § 841(c). Offenses Involving Listed Chemicals. It is a crime for a person to knowingly or intentionally: (1) possess a listed chemical with intent to manufacture a controlled substance; (2) possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance.

A violation of § 841(c)(1) or (2) carries a maximum penalty of 20 years imprisonment if a list I chemical; 10 years otherwise.

E. 21 U.S.C. § 844(a). Penalties for Simple Possession of Controlled Substances. A maximum penalty of one year imprisonment and a fine of \$100,000 with a \$1000 minimum fine.

- with one prior conviction, a maximum penalty of two years imprisonment with a 15 day mandatory minimum sentence, and a potential fine of \$250,000 with a \$2500 mandatory minimum fine.

- with two prior convictions, a maximum penalty of three years imprisonment with a 90 day mandatory minimum sentence and a maximum fine of \$250,000 with a \$5000 mandatory minimum fine.

Cocaine Base Penalties. A conviction for simple possession of cocaine base carries the following penalties:

20 years imprisonment, with a 5 year minimum mandatory sentence, and a minimum fine of \$1000, if:

- more than 5 grams, with no prior convictions;
- 3 to 5 grams, with one prior conviction; and
- 1 to 3 grams, with two prior convictions.

F. 21 U.S.C. § 844a. Civil Penalty for Possession of Small Amounts of Certain Controlled Substances.

- \$10,000 civil penalty

G. 21 U.S.C. § 846. Attempt and Conspiracy.

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense; the commission of which was the object of the attempt or conspiracy.

\*In proving the essential elements of conspiracy, the United States is not required to prove that an overt act occurred, only that two persons conspired or agreed to violate the drug laws of the United States.

\*There must be at least two actual participants in the conspiracy. It does not constitute a conspiracy under federal law for a drug dealer to reach agreement for a transaction with an undercover agent. Also, a single cash transaction between a buyer and seller may not constitute a conspiracy.

H. 21 U.S.C. § 848. Continuing Criminal Enterprise. "... a person is engaged in a continuing criminal enterprise if --

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations . . .

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources."

A conviction for operating a continuing criminal enterprise carries a maximum penalty of 20 years to life imprisonment with a mandatory minimum 20 year sentence and a \$2,000,000 fine.

-with one prior conviction, the sentence is 30 to life with a mandatory minimum 30 years imprisonment.

I. 21 U.S.C. § 849. Transportation Safety Offenses. This section provides an enhanced penalty for anyone who distributes or possesses with intent to distribute a controlled substance within 1000 feet of a truck stop or safety rest area. The maximum punishment is twice the punishment authorized by 21 U.S.C. § 841(b).

-with one prior conviction, the maximum penalty is tripled.

J. 21 U.S.C. § 853. Criminal Forfeiture. Property may be forfeited when it constitutes or is derived from any proceeds the person has obtained from drug trafficking, and if the property was used or intended to be used in any manner to commit or facilitate drug trafficking.

K. 21 U.S.C. § 856. Establishment of Manufacturing Operations. This statute makes it unlawful to:

(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make

available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

L. 21 U.S.C. § 858. Endangering Human Life While Illegally Manufacturing a Controlled Substance. This section prohibits manufacturing or transporting materials, including chemicals, which creates a substantial risk of harm to human life. The maximum penalty is 10 years imprisonment and a \$250,000 fine.

M. 21 U.S.C. § 589. Distribution to Persons Under Age Twenty-one. This section provides for enhanced penalties for persons at least 18 years of age who distribute controlled substances to persons under 21 years of age. The maximum penalty is double the standard maximum punishment, with a mandatory minimum sentence of not less than one year (except in the case of five grams or less of marijuana). For a second offense, the maximum punishment is tripled. For a third offense, a 10-year mandatory minimum sentence will apply.

N. 21 U.S.C. § 860. Distribution or Manufacturing in or Near Schools and Colleges. This section provides for an enhanced penalty for anyone who distributes or possesses a controlled substance with intent to distribute within 1000 feet of a school, playground, youth center, swimming pool, video arcade, etc. The maximum penalties are doubled, and with a one year minimum mandatory sentence (except in the case of five grams or less of marijuana). For a second offense, the maximum punishment is tripled. For a third offense, a 10-year mandatory minimum sentence will apply.

21 U.S.C. § 860(c) - also provides an enhanced penalty when a person 21 years of age or older employs, hires, uses, persuades, induces, a person under 18 years of age to violate this section.

O. 21 U.S.C. § 863. Drug Paraphernalia. The federal drug paraphernalia statute provide a maximum penalty of three years imprisonment and a fine of \$250,000 for persons selling paraphernalia or transporting paraphernalia through a facility of interstate commerce.

### III. Other Relevant Statutes.

A. 18 U.S.C. § 922(g)(1) - Federal firearms laws prohibit the possession of firearms by any person who:

- has been convicted of a felony or any crime punishable by imprisonment for a term exceeding one year;
- is a fugitive from justice;
- is an unlawful user of or addicted to any controlled substance;
- has been adjudicated mentally defective or committed to a mental institution;
- is an alien illegally or unlawfully in the United States;
- has been dishonorably discharged from the armed forces;
- has renounced his citizenship;
- is subject to certain civil restraining orders; or
- has been convicted in any court in a misdemeanor crime of domestic violence.

B. 18 U.S.C. § 924(c)(1)(A) - This law makes it unlawful for a person to use or possess a firearm during, in relation to, or in furtherance of a drug trafficking crime (or crime of violence). It provides for an additional mandatory sentence on top of the sentence for the underlying drug crime (or crime of violence), as set forth below:

- 5 years, if he “uses or carries” a firearm;
- 7 years, if the firearm is “brandished”; and
- 10 years, if the firearm is “discharged”.



FEDERAL DRUG MANDATORY MINIMUM PENALTIES  
(for Distribution, Possession with Intent to Distribute, or Manufacture)

<u>DRUG/AMOUNT</u>	<u>NO PRIORS</u>	<u>1 PRIOR</u>	<u>2 PRIORS</u>
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Meth

500 g (mixture) (or 50 g actual/pure)	10 years	20 years	Life
50 g (mixture) (or 5 g actual/pure)	5 years	10 years	10 years

Cocaine

5 kilos	10 years	20 years	Life
500 grams	5 years	10 years	10 years

Marijuana

1000 kilos	10 years	20 years	Life
100 kilos	5 years	10 years	10 years

Cocaine Base

50 grams	10 years	20 years	Life
5 grams	5 years	10 years	10 years

Simple Possession of Cocaine Base

Over 5 grams	5 years	5 years	5 years
3 - 5 grams	N/A	5 years	5 years
1 - 3 grams	N/A	N/A	5 years